

BURLINGTON DEPARTMENT OF PUBLIC WORKS COMMISSION

DRAFT MINUTES, September 17, 2014

(There was no August meeting)

645 Pine Street

(DVD of meeting may be on file at DPW)

COMMISSIONERS PRESENT: Bob Alberry, Tiki Archambeau, Jim Barr, Asa Hopkins (Vice Chair), Nathan Lavery (Chair), Solveig Overby and Jeffrey Padgett

Commissioner Lavery called the meeting to order at 6:30 p.m.

ITEM 1 – AGENDA

Correction on typo in the materials for Item 4 Consent Agenda (Hyde St STOP sign removal): STOP sign location should have read *Hyde St and North Willard St* (instead of Hyde St and Spring St).

ITEM 2 - THANKS TO FORMER COMMISSIONER MARK PORTER

Director Spencer and Commissioner Lavery spoke on behalf of the Department and Commission in recognizing former Commissioner Porter's volunteer work and presented him with a plaque.

ITEM 3 – PUBLIC FORUM

Mark Porter: 1) Brookes Ave resident: No Prospect is deteriorating between Pearl and North St, especially in the non-parking lane. 2) Does *not* support the proposed consolidation of City-wide hauling being pursued by Chittenden Solid Waste District (CSWD), nor the process taken thus far. Requests that the DPW Commission *not* approve it, and dig into it further as the proposal progresses.

Chris Khamnei: "No Parking Mon-Fri 8am-5pm" signs appeared on Overlake Park with no prior notice, or forum, for residents. Claims that his employee called DPW on his behalf and was told that there was a public forum 15 years ago and the signs were never installed. Mr. Khamnei requests that the signs be removed. Director Spencer will follow up on how to begin the process.

ITEM 4 – CONSENT AGENDA (Refer to Commission Packet)

4.10 Hyde Street STOP Sign Removal and No Parking

Staff recommends that the Commission:

- Amend the current STOP sign locations to remove the STOP sign at the intersection of Hyde St and Spring St, causing traffic on Hyde St to stop;
- Enact "No Parking" on the west side of No Willard St beginning 135' north of Archibald St extending 65' north;
- Enact "No Parking" on the east side Hyde St beginning 150' north of Archibald St and continuing 35' north.

Commissioner Hopkins moved to accept the Consent Agenda with staff's recommendations; Commissioner Alberry seconded. Unanimous.

ITEM 5 – 233 ST PAUL STREET TRADES APPEAL

(Communication, Norman Baldwin, Assistant Director, and Appellant)

(Refer to Commission packet)

Commissioner Lavery confirmed/announced that Appellant Chris Khamnei was present, as well as Norman Baldwin, C.E., Assist Director, Department of Public Works (DPW); John Ryan, Mechanical/Plumbing Inspector, DPW; Gene Bergman, Esq., City Attorneys' Office (representing the City of Burlington) and Andy MacIlwaine, Esq. (representing the Commission).

Mr. Khamnei submitted a Plumbing Permit Application to John Ryan, Plumbing/Mechanical Inspector, which Mr. Ryan denied. Dated 4/6/14, Mr. Khamnei wrote the following work description, "Repair present pipe configuration in basement for all eleven units." Mr. Khamnei had written his name under "Property Owner Name" and, under "Contractor Name (if different from property owner)" wrote "Same." Mr. Ryan wrote on the application, "Rejected No Plb. License." Mr. Khamnei is appealing the rejection and is asking for clarity on interpretation of "maintenance" of plumbing and what a "maintenance" person can or cannot do without a plumbing license.

Mr. Ryan, Burlington City Plumbing and Mechanical Inspector for approximately six years and VT licensed master plumber for over thirty years, claims that Mr. Khamnei wanted to change piping for 233 St Paul St, an 11-unit apartment building, but in the absence of a licensed contractor listed on the application, rejected it.

Submitted into evidence, some of which was included in the DPW Commission packet and some distributed at the meeting, copies of:

- Appeal letter dated 04/06/14 by Chris Khamnei to Norm Baldwin;
- Plumbing Permit Application for 233 St Paul St dated 4/6/14;
- Black's Law Dictionary;
- E-mails of 02/04/14, 02/05/15 and 02/06/14 between Chris Khamnei and Gerald Garrow, Robert Patterson, Ned Holt, Norm Baldwin and John Ryan;
- "State of Vermont Division of Fire Safety Vermont Plumbing Rules/The Department of Public Safety & The Plumbers' Examining Board 2012, Effective date...July 1, 2013;"
- Inspection Agreement Between the State of Vermont and the City of Burlington dated 05/06/13

Atty Bergman asked the Commission that their decision on the appeal not be colored by the delay in bringing the appeal before the Commission (due to its complexity). Commissioner Lavery closed this portion of the hearing. Discussion will take place after this meeting in a deliberative session. Once the Commission reaches a decision a ruling will be issued.

ITEM 6 - 49 CURTIS AVENUE TRADES APPEAL

(Communication, Norman Baldwin, Assistant Director, and Appellant)

(Refer to Commission packet)

Commissioner Lavery confirmed/announced that Appellant Adam Holt was present, as well as Mr. Baldwin; Bradley Biggie, Building Inspector, DPW; Atty Bergman (representing the City of Burlington) and Atty MacIlwaine (representing the Commission).

Mr. Biggie went to Mr. Adam Holt's residence at 49 Curtis Ave for a rough framing inspection of a permitted bathroom and while there observed that the cellar space was being used as habitable space and not code compliant. Further research revealed that the cellar space had been developed without a zoning or building permit, *all prior to Mr. Holt's purchase of the property*. Mr. Biggie sent a letter to Adam and Jamie Holt stating the reasons that the cellar space is uninhabitable. DPW is asking Mr. Holt to either bring the space up to code or have it returned as storage space (which Mr. Biggie stated could be done by taking out the ceiling and removing the carpeting) for life safety reasons.

Submitted into evidence, some of which was included in the DPW Commission packet and some distributed at the meeting, copies of:

- Memo dated September 11, 2014 to Public Works Commission from Mr. Biggie re: the Holt Appeal;
- E-mail from Mr. Holt to Mr. Biggie dated September 11, 2014 with follow-up questions;

- Certified letter dated July 23, 2014 to Director Spencer from Adam and Jamie Holt, asking the City to recognize that the basement remodel was completed prior to their ownership of the home and express the Holts' intention to work with the City to have a safe home and clean title;
- Photos of the space that Mr. Biggie took during his inspection;
- Sketch of the basement with accompanying square foot measurements;
- Photos of basement as sold in 2012;
- Notice of Hearing dated September 10, 2014 to Adam and Jamie Holt from Mr. Baldwin;
- Certified letter dated July 10, 2014 to Adam and Jamie Holt from Mr. Biggie stating that the basement would be listed as a non-habitable space, and the reasons;
- **Chapter 8 of the City Code of Ordinance pertaining to the adoption of NFPA 101 and Vermont Fire and Building Safety Code;**
- Print-out of City database pertaining to 49 Curtis Ave showing no record of zoning or building permits for the cellar space.

Mr. Holt has been directed to bring the space into compliance by securing a building permit as well as other applicable permits, comply with the referenced codes or return the space to its approved use as storage only.

Mr. Holt and his wife purchased the home in March, 2012. There was no disclosure about the basement remodel, though the house was being advertised as being rebuilt in 2004. After receiving Mr. Biggie's letter, Mr. Holt contacted the previous owners who lived at 49 Curtis Ave from 2005-2012; he was told that the bathroom was the only work being done. Mr. Holt also contacted the Zoning office, Mr. Biggie and the Electrical Inspector Shelley Warren. He wants to preserve what he purchased. He is concerned that the basement work was able to be done without the usual checks and balances picking up the fact that there were no permits and the work was not code compliant.

Mr. Holt submitted into evidence a packet, copies of which include a form showing when the home was built; listing sheets on how the home was advertised; photos on how the space presently looks, plans, photos of the dated work, square footage of the home; average heights of Americans; part of disclaimer statement showing that the owners had gotten permits for everything. The variance Mr. Holt is seeking would be for the one soffit box (he would need to consult with Mr. Ryan).

Mr. Holt would like the Commission to consider a possible variance of the code due to: the age of the home; a history of a finished basement; the fact that it was falsely advertised and fraudulently sold to the Holts; the seller, selling agent, buying agent, title search, home inspector, closing attorneys, disclosure and disclaimer statement all failed to inform the Holts about the work done in the basement without permits and inspections.

Mr. Biggie said that Mr. Holt would need to remove the carpet and ceiling to return the cellar to inhabitable use.

Commissioner Alberry moved to postpone this hearing pending an agreement between the Department and Mr. Holt, that the area in the cellar would not be occupied until a decision is made, *if* he (Mr. Holt) can apply for a variance.* Commissioner Lavery: The Commission is actually asking for a continuance option. If we have a continuance, at that point the homeowner doesn't need to make any changes because the Commission hasn't ruled on whether they would grant the appeal (meaning, Mr. Holt would not need to remove carpet or take down the ceiling). This would give Mr. Holt and the Department the chance to consider options for a variance and see if the parties reach an agreement, and if they do, they can come back and bring *that* forward to withdraw the appeal and if not, we would be able to finish the appeal and render the Commission's judgment. In the meantime, Mr. Holt will agree *not* to use the space as

habitable by any definition discussed here tonight. Commissioner Padgett seconded the motion for a continuance. Unanimous.

Mr. Holt is asked to submit an Affidavit** saying that he will not use the cellar as habitable space. Friendly amendment by Commissioner Archambeau: Ask for a timeline for the submission of the Affidavit (end of this week, concurred by Atty MacIlwaine). Absent the Affidavit, the Commission would call a special meeting next week to continue discussion. If the Affidavit is submitted on time, the possibility of a variance will be on the October meeting Agenda.

*Variance is for ceiling height *only* and would need to meet life and safety codes for Vermont.

**The Affidavit will be a formal statement that the cellar will *not* be used as a habitable space starting immediately and until the parties meet again with a variance proposal. Mr. Holt has been forewarned about the risk he is taking upon himself in using the space as it is.

ITEM 7 – CSWD CONSOLIDATED COLLECTION STUDY

(Presentation, Tom Moreau, Chittenden Solid Waste District)

(Refer to Commission packet)

Mr. Moreau reported on the status of the proposed consolidated collection study. CSWD started a citizens' advisory committee (Commissioner Padgett is on the committee but as a Burlington resident, not as a Commissioner). The "sisters neighborhood" chose to try consolidated pick-up which seems to be working for them. Some haulers are in opposition to the proposed study fearing for their livelihood. Director Spencer welcomes feedback and will continue to update the commissioners through his Director's Report or in other ways. Mr. Moreau also invited comments/questions via e-mail.

ITEM 8 – FISCAL YEAR 2015 STREET RECONSTRUCTION PROGRAM UPDATE

(Oral Communication, Laura Wheelock)

Staff made the decision to postpone the paving of Foster Street, as the Water Division needed to upgrade to a new 8" high pressure water line, slated for this fall. Ms. Wheelock intends to honor the project, possibly in the coming spring. Other unanticipated work was identified and done, thanks in part to this year's diligent paving inspector. Last winter's ice conditions took their toll on streets that were not slated for work. Utilities (Water Division, VT Gas and B.E.D.) were not able to meet our deadline of June 2015 to have their work completed prior to the start of the road construction.

ITEM 9 - MINUTES OF JULY 16, 2014

(Refer to Commission packet and to Amendment Request dated 9/17/14 from the Litwhilers)

Amendment Request: 1) Item 4, Public Forum, Stephen Litwhiler, 1st sentence: Change "tenants" to "customers." 2) Item 5, Consent Agenda, 5.30 Colchester Ave Taxicab Stand Removal, 1st bullet: Delete "495" Colchester Ave.

Commissioner Barr moved to accept the minutes as amended; Commissioner Archambeau seconded. Unanimous.

ITEM 10 – DIRECTOR'S REPORT (Chapin Spencer, Director)

(Refer to Commission packet)

- Our policy on regulating spaces in parking garages: The Commission regulates street parking and had up until a few years ago regulated spaces within garages. Beginning with next month's meeting, Director Spencer will bring forward a list of the current uses within the garages for the Commission's review.
- Next month's meeting: NACTO Urban Streets Design Guide adoption (see packet for October).

- Petroleum contamination determined to be from a non-city property that was discharged into our collection system. A temporary cap was placed on the pipe in April, 2014.
- Cliff St sidewalk meeting was held last night at DPW with neighbors following up from the March meeting. The final design will go out to bid this fall, with construction planned for next spring.

ITEM 11 – COMMISSIONER COMMUNICATIONS

Commissioner Barr – Questioned the North Prospect Street road surface. Director Spencer: We are actively exploring crack sealing to help preserve pavement quality. DPW is also hoping to get additional funding for a burst of sidewalk repair this fall; Director Spencer will report to the Commission at the next meeting.

Commissioner Overby – Questioned the asphalted portion of the east side of the Mansfield Ave sidewalk. DPW plans to attend to that section hopefully next year.

Commissioner Padgett as private citizen Jeff Padgett – His participation on the Citizen’s Advisory Council (CSWD) for consolidated collection: He is concerned about the relationship between the haulers and CSWD (haulers’ apparent anger with CSWD) and suggests CSWD invest some funds to rebuild the relationship with the haulers. Mr. Padgett took a position mostly against consolidated hauling because he didn’t believe that CSWD had the political capacity to come in from the top and be able to create a contract for all the towns and get all the haulers to agree with (too complicated). He suggested putting together a pamphlet encouraging neighbors to consolidate with each other with the benefit of better rates from the haulers.

As Commissioner Padgett: NACTO guidelines section about mid-block crossings – He found nothing about how to properly sign them or what warrants the application of one.

Commissioner Lavery: On behalf of his Hyde Street neighbors, a big thank-you for the work the department did. Asked that Director Spencer pass along to staff any e-mails he may have received from the residents.

ITEM 12 – EXECUTIVE SESSION FOR DELIBERATION OF APPEALS

Commissioner Padgett made a motion to move into deliberative session to deliberate appeal from Item 5 (233 St Paul St Trades Appeal). Commissioner Barr seconded. Once the Deliberative session ends, the Commission will adjourn.

ITEM 13 – NEXT MEETING DATE & ADJOURNMENT

The next regular DPW Commission meeting is scheduled for Wednesday, October 15, 2014 at 6:30pm. If an Affidavit for Item 6 (49 Curtis Ave Trades Appeal) is not received by the Commission by Friday, September 19th, a special meeting will be held next week.

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